

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

WESTERN BLUE PRINT COMPANY, LLC,

Respondent,

v.

MYRNA ROBERTS, MEL ROBERTS, DOCUCOPY, LLC, and
GRAYSTONE PROPERTIES, LLC,

Appellants.

DOCKET NUMBER WD72025

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: April 29, 2011

APPEAL FROM

The Circuit Court of Boone County, Missouri
The Honorable Gary M. Oxenhandler, Judge

JUDGES

Division Two: Mitchell, P.J., and Ellis and Howard, JJ.

CONCURRING.

ATTORNEYS

J. Kent Lowry and Scott T. Jansen
Jefferson City, MO

Donald W. Gould II (*Pro Hac Vice*)
Brent L. Vannoy (*Pro Hac Vice*)
Houston, TX

Attorneys for Respondent,

David J. Moen
Jefferson City, MO

Attorney for Appellants.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

WESTERN BLUE PRINT COMPANY,)
LLC,)

Respondent,)

v.)

MYRNA ROBERTS, MEL ROBERTS,)
DOCUCOPY, LLC, and GRAYSTONE)
PROPERTIES, LLC,)

Appellants.)

OPINION FILED:
April 29, 2011

WD72025

Boone County

Before Division II Judges:

Karen King Mitchell, Presiding Judge, and
Joseph M. Ellis and Victor C. Howard, Judges

This case involves the torts of breach of fiduciary duty and interference with business expectancy. It also involves a statute that prohibits computer tampering. The primary issues are (1) whether the branch manager of a limited liability company owes a fiduciary duty to the company; (2) whether the company's expectation of winning the bid to a contract was a valid business expectancy; and (3) whether the branch manager in this case copied and/or deleted the company's computer files without authorization. We affirm.

AFFIRMED.

DIVISION TWO HOLDS:

We hold that, in the context of this case, (1) the branch manager owed the company a fiduciary duty; (2) the company's expectation of winning the contract bid was sufficiently definite to justify submission of the tortious interference claim; and (3) a reasonable juror could conclude that the branch manager copied and/or deleted company computer files without authorization. There are various other points relied upon by the appellants, but we reject them all.

Respondent Western Blue Print Company, LLC (“Western Blue”) is a company that specializes in document printing and document management services. Western Blue hired Appellant Myrna Roberts to set up and run a branch office in Columbia, Missouri. Western Blue gave Ms. Roberts complete authority to run the Columbia office.

Eventually, Western Blue promoted Ms. Roberts from branch manager to division vice-president. Ms. Roberts was exposed to virtually every aspect of Western Blue’s business, including financial, strategic, and competitive information that Western Blue considered its “secret recipe.”

Ms. Roberts succeeded in procuring a contract with the University of Missouri (“University”) for Western Blue. Essential to this contract (“the University contract”) was Western Blue’s employment of a subcontractor that was certified as either a “Minority Business Enterprise” or a “Women’s Business Enterprise” (“MBE/WBE”). Ms. Roberts and her husband, Appellant Mel Roberts, decided to create such an entity themselves, but they did not inform Western Blue that they were doing so. This entity would eventually become known as DocuCopy, LLC (“DocuCopy”).

Western Blue’s understanding was that DocuCopy was primarily a subcontractor with regard to the University contract. However, when Western Blue inquired about the ownership of DocuCopy, Ms. Roberts failed to disclose her husband’s interest—or her own role—in the company.

Ms. Roberts assured Western Blue that she had no interest in DocuCopy and that she received no financial benefit from DocuCopy. Mr. Roberts did not disclose his interest in DocuCopy either.

In addition, Western Blue paid DocuCopy over 90% of all funds Western Blue received from clients for work subcontracted to DocuCopy, whereas a typical subcontractor would receive approximately 60% of such funds.

Ms. Roberts quit Western Blue and purchased a 100% interest in DocuCopy. Almost all of the other Western Blue employees in Columbia then joined DocuCopy. Bids for the University contract were due in June of 2006, two months after Ms. Roberts and the other employees left Western Blue.

Western Blue conducted an analysis of Ms. Roberts’s company laptop. The analysis revealed that files had been deleted, including Western Blue’s database of customer names, contacts, and sales history. Other files that had been deleted included Western Blue’s business records containing financial information, strategic planning, profit analysis, and cost analyses. Among the deleted documents was one entitled “Competitive Edge for MU Contract Renewal 2006,” which included a strategic discussion of how to renew Western Blue’s contract with the University.

Both Western Blue and DocuCopy presented bids for the University contract. The University awarded DocuCopy the contract. Western Blue’s bid ranked second among the four

bids presented to the University. The president of Western Blue testified that, as a result of losing both the University contract and the State of Missouri contract, Western Blue was forced to close its Columbia branch.

A reasonable juror could conclude that, while still working for Western Blue, Ms. Roberts engaged in conduct designed to sabotage Western Blue's ability to successfully bid on the University contract in 2006 and to promote DocuCopy's ability to obtain the bid.

Essential to Western Blue's breach of fiduciary duty claim is the existence of a fiduciary duty. This case requires us to decide whether a general employee, entrusted with considerable control and responsibility for the employer's affairs but not officially designated as a corporate officer, owes the employer a fiduciary duty, apart from the duty of loyalty. We hold that such an employee owes her employer such a duty.

For the purposes of a tortious interference claim, the claimed business expectancy must be facially reasonable and valid. Here, Western Blue's business expectation in winning the bid for the University contract was facially reasonable, and Western Blue adduced substantial evidence of its validity.

In order to recover under its computer tampering claim, Western Blue was required to prove that Ms. Roberts, knowingly and without authorization, deleted, modified, took, or disclosed data from a Western Blue computer. Western Blue adduced sufficient evidence to establish this claim.

The trial court has discretion to award attorneys' fees pursuant to section 537.525 RSMo 2000, and it did not abuse that discretion here.

In order to recover under a civil conspiracy theory, Western Blue was required to prove, among other things, that Mr. Roberts acted with an unlawful objective. Here, the trial court did not err in submitting the civil conspiracy claim because substantial evidence supported the "unlawful objective" element, and the Robertses have challenged no other valid element of the tort.

The Robertses cite no authority for their remaining claims of error.

Accordingly, we affirm.

OPINION BY: Karen King Mitchell, Presiding Judge

April 29, 2011

* * * * *

THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.